

1958

February 25

NEW HAMPSHIRE LAW LIBRARY

OCT 01 1998

CONCORD, N.H.

Mr. James J. Barry, Commissioner
Department of Public Welfare
State House Annex
Concord, New Hampshire

Re: Benjamin F. Doe, Sr., Pending OAA
Center Ossipee

Dear Mr. Barry:

We have at hand your letters of December 13, 1957 and February 11, 1958 in which you requested our opinion as to the effectiveness and permanence of the support provision incorporated in a deed from the above named applicant to his son dated September 10, 1954, which contains the following language "It is part of the consideration for this deed that the grantor shall have a home with the grantee during the lifetime of the grantor and the grantee is to take care of the grantor as long as he, the grantor, lives." You have advised us that the son subsequently conveyed the real estate in question to some third party and that the applicant did not join in said conveyance. We understand, however, that the son has continued to provide a home for the applicant at a different location and has continued and is continuing to provide for his needs.

The quoted language from the deed does not in our opinion indicate an intention of the parties to create a condition subsequent as there is no provision for a right of entry for condition broken. It is also significant that the deed merely recites an obligation on the part of the son "to provide a home" and does not specify that he is to provide his father with a home on the premises conveyed. It has been held that where the only consideration for a conveyance is the agreement of the vendee to support and maintain the vendor during the life of such vendor the vendor shall have no lien against the premises conveyed. Arlin v. Brown, 44 N.H. 102. For the reason cited above, and in view of the fact that there has been an intervening third party purchaser, we do not believe that the son's agreement to support is a covenant which runs with the land and we doubt that the court, in the event of the son's failure to support, would set aside the deed and restore title of the property to the applicant.

Mr. James J. Barry, Commissioner

-2-

It is our opinion, however, that if the son should fail or refuse to support his father and provide him with a home that the court would enforce the agreement in an appropriate action brought by the applicant against his son.

"A grantee by accepting a deed of conveyance for a consideration to be performed such, for instance, as to support the grantor becomes bound to perform his obligation just as he would be had he become party to an indenture in which he expressly agreed to perform such obligation." Thompson on Real Property, Vol. 6, s. 3210.

"Courts of equity have a marked tendency to afford the grantor relief because of the grantee's refusal or failure to furnish support in accordance with a promise given in consideration of the deed, particularly where the grantor is of advanced years and without other means. Relief may be granted in a proper case whether there is a promise to furnish support or a promise to pay a definite amount to be used for support." 26 C.J.S., Deeds, s.21 b

Since the son has continued to provide his father with a home and care for his needs and has expressed a willingness to continue to do so the applicant does not in our opinion have a cause of action against his son at the present time.

Very truly yours,

George T. Ray, Jr.
Assistant Attorney General

GTR/lit